

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14376 of the National Parks and Conservation Association, as amended, pursuant to Sub-section 8207.2 and 8207.11 of the Zoning Regulations, for a special exception under Sub-section 7106.1 to change a nonconforming use from offices to chancery with a variance from the prohibition against permitting in residential districts a proposed use that is not a neighborhood facility (Paragraph 7106.114), premises being located in an R-5-B District at 1701 - 18th Street, N.W. (Square 153, Lot 132).

HEARING DATES: November 27, 1985, January 22 and January 27, 1986

DECISION DATE: February 12, 1986

FINDINGS OF FACT:

1. This application was filed in the Office of the Zoning Secretariat on September 24, 1985. On September 30, 1985, counsel for the applicant filed a motion for expedited treatment of the application based on the time constraints involved with the contract to purchase the property by the Coordination Council for North American Affairs (CCNNA) and the delays experienced by the CCNNA in attempting to resolve the issue of how the CCNNA should proceed with the proposal through the rezoning process, as well as meetings with various local and federal agencies including the Department of State, the National Capitol Planning Commission, the Office of Planning and the Advisory Neighborhood Commission.

2. The Chairperson of the Zoning Committee of the Residential Action Coalition and a property owner located within 200 feet of the premises opposed the request for expedited consideration of the subject application as not reasonably justified except to "short circuit" the concerns that the neighborhood might express. The RAC representative also expressed opposition to the acceptance of the application for filing because it was not filed pursuant to Article 46 of the Zoning Regulations as is required for Board consideration of the location of chanceries in other than commercial districts.

3. At its public meeting of October 2, 1985, the Board granted the applicant's request for expedited hearing of the subject application for good cause shown. The expression of the representative of the RAC relative to the appropriate filing of the application is addressed later in this order.

4. The application was scheduled for public hearing on November 27, 1985. By motion filed on November 20, 1985 and through appearance at the public hearing of November 27, 1985, counsel for the applicant requested a continuance of the public hearing due to the fact that the authorized representative of the CCNAA was out of town unexpectedly and, further, to permit the applicant the opportunity to meet again with the Advisory Neighborhood Commission. The representative of the RAC opposed the granting of the continuance and reiterated its opposition to the acceptance of the subject application for filing. The Chairperson ruled that the case be continued to the next available hearing date.

5. The application was scheduled for hearing on January 22, 1986. As a preliminary matter at that hearing, the representative of the RAC requested the Board to dismiss the subject application as not properly filed. The bases for the request to dismiss are summarized as follows:

a. The proposed use is a chancery and, therefore, should be considered under the provisions of Article 46 of the Zoning Regulations, and the Foreign Missions Act. Consideration of the subject application under any provisions of the Zoning Regulations other than Article 46 is inappropriate.

b. The property is zoned R-5-B, which does not permit chancery use. Rezoning of the property to facilitate the location of a chancery use at the subject premises is not appropriate because it would constitute spot zoning.

These issues are addressed later in this order.

6. As a second preliminary matter, the RAC representative requested the Board to postpone the hearing on the subject application pending the outcome of hearing and consideration of Appeal No. 14408. Appeal No. 14408 was filed by the Residential Action Coalition on January 22, 1986 and challenged the decision of the Zoning Administrator that a chancery use can locate resulting from a change of nonconforming use from nonprofit organization to chancery pursuant to Sub-section 7106.1 and Sub-paragraph 7106.114 of the Zoning Regulations.

7. Counsel for the applicant opposed both motions by the opposition. The Chairperson ruled that the hearing should proceed as scheduled.

8. The property is located at the northeast corner of the intersection of 18th and R Streets, N.W. and is known as premises 1701 18th Street, N.W. It is zoned R-5-B.

9. The site is rectangular in shape, contains approximately 4,884 square feet of land area and is improved with a four-story red brick structure which occupies approximately eighty-five percent of the site. The subject structure was originally constructed near the turn of the century as a single-family mansion and is located within the Dupont Circle Historic District.

10. The building was designed by the noted architectural firm of Hornblower and Marshall. The building features a winding staircase, large corner rooms, beamed ceilings, crown moldings and a three-story organ room which contains a large pipe organ, and large fireplace and is further distinguished by a two-story stained glass window.

11. The property has been used for nonprofit office purposes for approximately forty years. The property was occupied by the Disabled American Veterans from 1946 until 1967. By Order No. 9373, dated November 6, 1967, the Board approved a change of nonconforming use from the offices of the Disabled American Veterans to offices of the National Parks and Conservation Association, the applicant in the instant application.

12. In BZA Order No. 9373, the Board retained jurisdiction to approve any subsequent change or addition of nonprofit organizations in the building. BZA Order No. 11226, dated March 14, 1973, approved the use of part of the third and fourth floors by the Joint Commission on Mental Health of Children, Inc. and the National Assembly for Social Policy and Development. BZA Order No. 11791, dated June 11, 1975, approved the use of the third and part of the fourth floor by the American Psychiatric Association.

13. The applicant is presently under contract to sell the subject property to the CCNAA which is the representative of the people of Taiwan in the United States. The CCNAA intends to use the property for the offices of its Defense Procurement Division which is currently located approximately four blocks from the subject site at 2224 R Street, N.W.

14. Paragraph 7106.11 of the Zoning Regulations authorizes the Board to approve a change of a nonconforming use to a use which is first permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, provided that:

- a. the proposed use will not adversely affect the present character or future development of the surrounding area;
- b. the proposed use will not create any deleterious

external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects;

c. when an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use; and

d. in residential districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

e. The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization or enjoyment of property in the neighborhood.

15. The CCNAA is organized as a not-for-profit corporation under the laws of Taiwan and is recognized pursuant to an Act of Congress and an Executive Order of the President of the United States to represent the interests of the People of Taiwan in the United States. Specifically, Section 3301(a) of the Taiwan Relations Act states that the purpose of the Act, in part, is to "promote the foreign policy of the United States by authorizing the continuation of commercial, cultural and other relations between the people of the United States and the People of Taiwan." Section 3301(b)(1) states that it is the policy of the United States "to preserve and promote extensive, close and firendly commercial, cultural and other relations between the people of the United States and the People of Taiwan."

16. Pursuant to Section 1-204 of Executive Order No 12143, the President of the United States has determined that the CCNAA is to be "the unofficial instrumentality established by the People of Taiwan having the necessary authority under the laws applied by the People of Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act." Section 3303(a) of the Taiwan Relations Act states that "the absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States apply with respect to Taiwan prior to January 1, 1979." Section 3314 of the Act defined the term "laws of the United States" to include any statute, rule, regulation, ordinance, order or judicial rule or decision of the United States or

any political subdivision thereof." The Board finds that this definition encompasses the Zoning Regulations of the District of Columbia.

17. The special privileges and immunities accorded to CCNAA personnel are governed and limited by an Agreement on Privileges and Immunities Between the American Institute in Taiwan and the Coordination Council for North American Affairs. A representative of the Department of State, Office of Foreign Missions, testified that the privileges and immunities created by this agreement are wholly distinct from "diplomatic" privileges and immunities both in their source and content and that the scope of these privileges and immunities are far more limited than in the case of diplomatic privileges and immunities.

18. The Department of State does not consider the CCNAA to be a chancery, although, in their view, it might be treated as such under the Zoning Regulations. The Department officially views the relations between the People of Taiwan and the United States as unique, and there is no other entity with which the United States conducts its affairs in a similar manner. The Department of State reasoned that the CCNAA zoning application would be eligible to receive the same zoning treatment accorded to chanceries; nevertheless, the Department of State interposed no objection to the CCNAA being treated as a general office use pursuant to the ordinary zoning laws of the District of Columbia.

19. The Zoning Regulations define a chancery as "the principle offices of a foreign mission used for diplomatic or related purposes. . ." The critical element in this definition is the requirement for diplomatic related purposes based on the definition and according to the Department of State. The Board finds that the CCNAA does not enjoy the status of established diplomatic relations with the United States and, therefore, does not meet the definition of a chancery.

20. The Zoning Regulations define an international organization as "a public international organization designated as such pursuant to the International Organization Immunities Act (22 USC, Sections 288 to 288f2) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs" The Board notes that the CCNAA is not listed as an international organization pursuant to 22 USC Section 288.

21. The CCNAA further does not meet the definition of public international organization as set forth in the Zoning Regulations, in that the CCNAA was not created pursuant to a treaty or international agreement. The CCNAA was created

under the laws of Taiwan as a nonprofit corporation. In addition, the CCNAA was not created by two or more foreign governments, nor is it an entity through which two or more foreign governments engage in some aspect of international affairs. The Board finds that the CCNAA does not meet the definition of international organization.

22. Based on the foregoing Findings of Fact Numbers 15 through 21, the Board finds that the CCNAA does not meet the definition of chancery or international organization, as defined by the Zoning Regulations and, therefore, should be considered as general office use pursuant to Paragraph 5101.37 of the Zoning Regulations.

23. The existing use of the premises as offices for a nonprofit organization is first permitted as a matter of right in the C-1 District, pursuant to Paragraph 5101.39 of the Zoning Regulations. As set forth in Finding of Fact No. 22, above, the proposed use is also first permitted as a matter of right in the C-1 District.

24. The existing offices of the Defense Procurement Division of the CCNAA have been located at 2224 R Street, N.W., since approximately 1949. The premises at 2224 R Street contain approximately 7,536 square feet of floor area. The CCNAA employs approximately forty-five persons at 2224 R Street. The CCNAA has been seeking a new location to house the operations currently located at 2224 R Street, because the building at that site is too small to provide sufficient room for the orderly and efficient conduct of its business operations.

25. The premises at 1701 1st Street, N.W., contain approximately 17,557 square feet of floor area and have been used for office purposes for approximately forty years. The premises would provide sufficient room for the efficient conduct of its business operations as well as allow for a portion of the fourth floor of the premises to be devoted to residence for up to six officers of CCNAA.

26. The CCNAA proposes to discontinue office use at 2224 R Street upon occupancy of the subject premises. The CCNAA proposes to convert 2224 R Street to a residence for officers of the CCNAA for as long as the subject premises remain in the ownership of the CCNAA. The CCNAA also owns property at 2149 Florida Avenue, N.W., which is used as a residence for its officers. In addition, as noted in Finding of Fact No. 25, a portion of the fourth floor of the subject premises will be devoted to housing for up to six officers of the CCNAA.

27. The CCNAA desired a location in close proximity to its present location because its offices have been located in the area since 1949, many of its employees live in the

immediate neighborhood and walk to work, and the area is well served by public transportation.

28. Approximately sixty-two percent of the employees of CCNAA live in the Dupont Circle area and walk to work at its present offices at 2224 R Street. Of the remaining employees, five commute to the site by automobile and the rest arrive via public transportation. Because of its close proximity to the current location of its offices, relocation to the subject premises would allow the employees of CCNAA to continue to arrive in the same manner as currently used.

29. Two on-site parking spaces are provided at the rear of the subject premises. Access to the parking area is through a twelve foot wide public alley. CCNAA will secure three additional legal off-street parking spaces in the vicinity for use by its employees.

30. The site abuts a row dwelling in the R-5-B District to the east. Further east of the subject site there are two additional residential row dwellings. At the corner of New Hampshire and R Streets, N.W., a large vacant row structure is undergoing renovation. This property is located approximately seventy-five feet from the subject sit and is zoned SP-1. South of the site, across R Street, is the Eastern Star Temple in the SP-1 District. To the west, across 18th Street, is a large vacant row structure previously occupied by the American Psychiatric Association located in the R-5-B District. North of the site, across the twelve-foot wide public alley, there are five row dwellings in the R-5-B District.

31. The immediate neighborhood is characterized by a mix of residential, chancery, office, and institutional uses. Eight chanceries are within two blocks of the subject site; Argentina, Grenada, Nicaragua, Rwanda, Sierra Leone, Singapore, Union of Soviet Socialist Republics, and Zaire. Approximately twenty-eight office or institutional uses are in the vicinity of the site. The majority of these are located in the SP-1 District fronting on New Hampshire Avenue.

32. There will be no exterior alterations to the existing building. The facade will be cleaned, repaired and maintained so as not to detract from its historic significance. Any exterior modifications to the building will be carried out only after consultation with an architectural historian.

33. This site has a history of office use spanning a period of approximately forty years. The existing office use employs approximately forty persons, of which seventeen persons currently arrive at the site by automobile. The proposed office use employs approximately forty-five

persons, of which five persons currently arrive by automobile.

34. Because of the nature of its operations, the proposed use will be less intense than the prior office use of the subject building. The proposed use attracts few visitors to the site as virtually all transactions are handled by telephone or correspondence and almost all business meetings are held off site. The use will generate fewer vehicle trips during peak hours and reduce parking demand because a large portion of its employees will walk to work or use public transportation. In addition, up to six employees will reside at the subject premises.

35. The proposed use will not produce any adverse external effects. The proposed office use will be less obtrusive in terms of parking and traffic demand than the prior office use. The exterior of the building will be cleaned. The proposed change of office use will not create any adverse exterior noise, illumination, vibration, odor or design and siting effects.

36. The applicant's expert urban planner argued that the proposed use constitutes a neighborhood facility based on the following:

a. The top floor of the building will be used for residential purposes to house up to six officers of the CCNAA who will work in the building.

b. The neighborhood contains a high concentration of chanceries, institutions, and professional offices; therefore, the proposed use is consistent and compatible with existing uses in the neighborhood.

c. The existing offices of the CCNAA are located in the neighborhood, approximately four blocks from the subject site. The existing office location will revert to residential use for officers upon occupancy of the subject premises, housing will be provided for up to six officers in the subject building, and the CCNAA's property at 2149 Florida Avenue also houses officers of the CCNAA. Thus, the proposed use will be conveniently located so that a large number of CCNAA's employees will be able to work in the neighborhood in which they live.

The Board is not persuaded by the rationale of the urban planner witness that the proposed use constitutes a neighborhood facility as intended by the Zoning Regulations. The Board finds the proposed use offers no daily services to the surrounding neighborhood.

37. Entitlement to variance relief from the neighborhood facility provision of the Zoning Regulations requires that the applicant show that the property is affected by an exceptional situation or condition, that the strict application of the regulations would impose a practical difficulty or hardship upon the owner of the property and that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the Zoning Regulations.

38. The applicant's expert real estate witness testified that while the top floor space can be readily made into sleeping and sitting rooms and a kitchen for the six officers who will reside in the premises, reconversion of the entire building to residential use would be a major and costly undertaking, highly unlikely under current market conditions. The real estate expert further testified that in addition to the high cost of renovation, the location of the subject premises at a busy, noisy intersection, with almost no parking, and no space for amenities such as a swimming pool, gardens or tennis court makes the site unlikely to attract a residential user. The subject property contains approximately 17,557 square feet of floor area and no similar sale of a comparable property has taken place in the Dupont Circle area since the turn of the century in part because viable alternatives exist in the Kalorama, Foxhall, and Georgetown areas of the city with far more amenities and less cost. The Board so finds.

39. The applicant's expert architectural witness testified that conversion of the subject premises for purposes permitted under the R-5-B zoning in compliance with the D.C. Building Code is economically infeasible. The architect further testified that partitioning within the structure and provisions for elevators and fire stairs would destroy many of the architectural features of the building, including the unique three-story organ room with stained glass window, the spiral wooden staircase, the large fireplace with two-story chimney, as well as original crown moldings and beamed ceilings. The Board so finds.

40. The applicant's expert urban planning witness testified that the subject premises are located in the Dupont Circle Historic District and were built at the turn of the century as a single family mansion. However, the premises were converted to nonresidential use approximately forty years ago and have been used continuously for office purposes since that time. The interior has been structurally and mechanically altered to accommodate office use. The predominant development in the immediate area is a mixture of residential, professional office, chancery and institutional uses. The witness further testified that, based on the land uses in the area and the past history of office use in the subject premises, the infeasibility of

reconversion to residential purposes and the nature of the operations of the proposed use, the use of the subject structure as proposed would be the least intensive non-residential use of the site, and would have less impact on the area in terms of traffic, parking and use than would matter of right residential use. The Board so finds.

41. The strict application of the Zoning Regulations would require that the building be put to a use which is either a residential use or a neighborhood facility in order to qualify for a change of nonconforming use. As indicated in Findings of Fact Nos. 39 through 41, the subject structure, containing 17,557 square feet of floor area, could not easily be re-established for residential purposes. It was reconfigured for office purposes approximately forty years ago, has a long history of continuous office use, is located in an area with a high concentration of similar uses, and renovation is prohibitively expensive.

42. The proposed use will be less intense than other neighborhood facilities which are first permitted as a matter of right in the C-1 District and which could be established at this location without the need for variance relief. Uses first permitted in the C-1 District which could be characterized as "neighborhood facilities" include such uses as a bar, bank, dry cleaning or laundry station, gas station, automobile accessory store, bakery, pharmacy, TV and appliance store, cafe or restaurant, liquor store, sporting goods or variety store. Although those uses could be characterized as neighborhood facilities, they would be out of character with the surrounding neighborhood.

43. The CCNAA submitted a list of conditions to which it would agree for office use at the subject premises, as follows:

- a. A portion of the building at 1701 18th Street, N.W. will be used for residential purposes to house up to six officers of the Defense Procurement Division.
- b. Upon occupancy of 1701 18th Street, N.W. by CCNAA for office purposes, and upon discontinuation of the office use at 2224 R Street, N.W. by CCNAA, the said 2224 R Street will be used for residential purposes for the officers of the Defense Procurement Division for so long as 2224 R Street remains in the ownership of CCNAA.
- c. In conjunction with the office use of 1701 18th Street, N.W., the CCNAA will not seek diplomatic parking in front of the building.
- d. CCNAA will keep intact the pipe organ in the "Organ Room" in the building at 1701 18th Street, N.W.

e. CCNAA will not undertake any exterior modifications to the building at 1701 18th Street which will detract from the historic significance of the facade. Any exterior work to the facade of the building will be carried out only after consultation with an architectural historian.

f. CCNAA will establish a liaison officer with ANC 2B in order to address any concerns by ANC 2B about the manner of operation of the offices at 1701 18th Street, N.W.

44. The Office of Planning, by memorandum dated January 15, 1986, reported that a recommendation for approval of the application for chancery use as originally filed in this case would be inappropriate because the proposed use would conflict with the Foreign Missions and International Organizations Element of the Comprehensive Plan. The Office of Planning also reported, if it were confirmed that the CCNAA did not constitute a chancery, that it would not object to approval of as an office use under unique and carefully conditioned circumstances similar to those listed on page 2 of the recommendation by the Advisory Neighborhood Commission dated November 19, 1986.

45. Advisory Neighborhood Commission 2B, by letter dated November 19, 1985, indicated that the ANC voted at its meeting of November 13, 1985 to oppose the granting of the application for the following reasons:

a. the request is not made under the provisions of the Zoning Regulations specified for diplomatic uses, the site does not fall within the boundaries specified under the Foreign Missions Act, and consideration of a diplomatic use under any provisions other than specified would allow any building in the Dupont Circle area to become diplomatic in usage;

b. the Zoning Regulations prohibit a change of nonconforming use to any use other than residential or neighborhood facility unless a unique situation exists that prevents such uses. There is no clear evidence that the building can not be converted to residential purposes, nor is there any evidence that a chancery is a neighborhood facility; and

c. the requested relief is in conflict with the Comprehensive Plan, which calls for the preservation and increase in residential uses north of Massachusetts Avenue. Such use will allow a commercial use in a residential area and further increase the parking problem in the area, add more traffic, introduce an element of uncontrolled commercial activity and endanger an historic building.

46. The ANC letter of November 19, 1985, further indicated that the ANC voted at its September 25, 1985 meeting to support the continuation of a nonconforming use of the subject premises with the following conditions:

- a. that the applicant not apply for a chancery use;
- b. That the applicant convert its present building back to residential use;
- c. that the applicant provide a covenant protecting the interior of the building, particularly the organ;
- d. that the applicant hire an architectural historian to assist in the restoration of the exterior of the building; and
- e. that the applicant agree not to seek any diplomatic parking modifications.

The ANC was of the opinion that the applicant had not complied with the above conditions, and that sufficient notice to the neighborhood was not given for the September 25, 1985 meeting for proper consideration of the application. The ANC reconsidered its position at its meeting of November 13, 1985, and voted to oppose the application as set forth in Finding of Fact No. 45.

47. By letter dated January 14, 1986, the ANC indicated that the application was considered at its meeting of January 8, 1986. Representatives of the applicant were present at that meeting, and presented a Declaration of Covenants for the ANC's consideration. The ANC discussed reconsideration of its prior motion. That motion failed by a vote of three to three.

48. Representatives of the Residential Action Coalition and the Dupont Circle Citizens Association, as well as two property owners within 200 feet of the subject premises, appeared at the public hearing in opposition to the application. The opposition is summarized as follows:

- a. the proposed use should be considered as a chancery use under Article 46 of the Zoning Regulations;
- b. the application does not meet the requirements of the special exception, in that it will have an adverse impact on the present character and future development of the neighborhood, is not in harmony with the Zoning Regulations and Map, and it is not a neighborhood facility;
- c. there is no hardship in re-establishing a

residential use in the building;

d. the proposed use will destabilize a predominantly residential neighborhood;

e. the proposed use will set a precedent for chancery use in the neighborhood;

f. the conditions agreed to by the covenant presented to the ANC are not binding;

g. the proposed use will pose a security risk to residents of the immediate area, as evidenced by incidents at other chanceries in the area;

h. there will be no control over what occurs inside the building; and

i. the proposed use may require the installation of special antennas or satellite dishes on the roof of the building.

49. The Board is required to give "great weight" to the written issues and concerns of the ANC as they relate to issues before the Board. In addressing the concerns of the ANC, as well as the opposition, the Board finds as follows:

a. the proposed use is not a chancery use as defined by the Zoning Regulations as discussed in Finding of Fact No. 22 of this order;

b. the application is properly filed before the Board as a change of nonconforming use, as confirmed by the letters signed by the Zoning Administrator dated September 13, 1985 and January 16, 1986;

c. the applicant has evidenced that it agrees to abide by conditions similar to those enumerated by the ANC at its September 25, 1985 meeting, and incorporation of those conditions in this order will make the conditions legally enforceable on CCNAA.

d. the applicant has demonstrated a hardship inherent in the existing conditions of the property, as set forth in Finding of Fact Nos. 39 through 42 of this order;

e. the Board decides applications on a case-by-case basis, and the granting of this application, therefore, will not set a precedent allowing intrusion of chancery uses in the neighborhood; and

f. the security of office uses is more properly

addressed under the jurisdiction of the Metropolitan Police Department.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception and a variance. In order to be granted such special exception relief, the applicant must demonstrate substantial compliance with the requirements of Sub-section 7106.1 of the Zoning Regulations and that the relief can be granted as in harmony with the intent and purpose of the Zoning Regulations and will not tend to adversely effect the use of neighboring property. As to the variance relief, the applicant must demonstrate that the property is affected by an exceptional situation or condition inherent in the property and that the strict application of the Zoning Regulations would result in an undue hardship upon the owner, and that such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the Zoning Regulations and map.

The Board concludes that the applicant has met its burden of proof for special exception relief for a change of nonconforming use pursuant to Paragraphs 7106.111, 7106.112, 7106.113 and 7106.115. The Board further concludes that the applicant has met the burden of proof for variance relief from the neighborhood facility requirements of Sub-paragraph 7106.114. As to the special exception, the Board concludes that both the proposed use and the existing use are first permitted as a matter of right in the C-1 District, the proposed use will not adversely affect the present character or future development of the surrounding area as the nonconforming office use of the subject premises has been continuous for approximately forty years, and that due to the nature of the proposed operation, the proposed use will not create any adverse external effects.

As noted in Finding of Fact No. 14(d), the change of nonconforming use provisions of the Zoning Regulations require that, in residential districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility. The Zoning Regulations do not define the term "neighborhood facility"; therefore, the determination whether or not a proposed use is a "neighborhood facility" is left to a case-by-case analysis by the Board of Zoning Adjustment. The Board has held in previous cases that it is as facility that is designed to provide retail and personal service for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development.

As to the variance relief, the Board concludes that the subject site is affected by an exceptional condition or situation and that the strict application of the Zoning Regulations would result in an undue hardship upon the owner, in that the property is located in the Dupont Circle Historic District and was developed prior to the adoption of the Zoning Regulations, the structure is of excessive size for a single residential unit, the conversion of the structure to permitted R-5-B uses would be excessively costly, and would destroy existing historic architectural embellishments, including the organ room and the two-story stained glass window, and the structure was reconfigured for office use approximately forty years ago.

The Board concludes that the requested relief can be granted, as hereinafter conditioned, without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. The Board further concludes that it has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED, subject to the following CONDITIONS:

1. The use of the subject facility shall be limited to offices of the Defense Procurement Division of the Coordination Council for North American Affairs for the People of Taiwan.
2. A portion of the fourth floor shall be devoted to residential use, housing no less than four officers of the CCNAA. Office use on the fourth floor shall be limited to the two rooms fronting on R Street.
3. The number of employees at the subject site shall not exceed fifty-five.
4. Upon occupancy of 1701 18th Street by CCNAA for office purposes, and upon discontinuation of the office use at 2224 R Street by CCNAA, the said premises shall be used for residential purposes for the officers of CCNAA for so long as 2224 R Street remains in the ownership of CCNAA.
5. In conjunction with the office use of 1701 18th Street, CCNAA shall not seek diplomatic parking in front of the building.
6. CCNAA shall keep intact the pipe organ in the "Organ Room" in the building at 1701 18th Street.
7. CCNAA shall not undertake any exterior modifications to the building at 1701 18th Street which will detract from the historic significance

of the facade. Any exterior work to the facade of the building shall be carried out only after consultation with an architectural historian.

8. The open area at the rear of the property shall be used for parking by CCNAA for two vehicles. CCNAA shall secure three off-street parking spaces in the vicinity of the subject site for use by CCNAA employees. The Certificate of Occupancy for the subject facility shall issue only for the period of time for which a lease evidencing the provision of three parking spaces within 1,000 feet of the subject site is provided.
9. The stained glass window in the "Organ Room" shall be backlit at night, so that the stained glass is visible from the outside of the building.

VOTE: 4-1 (Charles R. Norris, Paula L. Jewell, and Carrie L. Thornhill to grant; William F. McIntosh to grant by proxy; Lindsley Williams opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: _____

JUN 26 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.